



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201447059

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 26 2014

T:EP:RA:T2

Uniform Issue List: 408.03-00

XXXXX  
XXXXX  
XXXXX

Legend:

Taxpayer = XXXXX

IRA = XXXXX  
XXXXX  
XXXXX

Amount = XXXXX

Financial Institution A = XXXXX

Financial Institution B = XXXXX

Borrower = XXXXX

Promissory Note = XXXXX  
XXXXX

Dear :

This is in response to your request dated December 12, 2013, as supplemented by correspondence dated March 23, 2014, April 10, 2014, and June 26, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer represents that he received a distribution from IRA maintained by Financial Institution A, totaling Amount. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to erroneous information provided to Taxpayer by Financial Institution A and Financial Institution B. Further, Taxpayer represents that he has not used the Amount for any other purpose.

Taxpayer, through IRA, invested Amount in Promissory Note, which was secured by a deed of trust on property owned by Borrower. Promissory Note was made payable to IRA. The beneficiary of the deed of trust was Financial Institution A as custodian of IRA. The documentation received by Taxpayer at the time he established IRA did not permit investment of Amount in Promissory Note through IRA. Taxpayer represents that he nonetheless was advised by representatives from Financial Institution A and Financial Institution B that he could invest Amount in Promissory Note through IRA, and further advised that he could make Promissory Note payable to IRA.

Borrower attempted to wire transfer certain repayments of principal and interest under Promissory Note to Financial Institution A for further deposit to IRA, but such deposits were rejected by Financial Institution A. Financial Institution A thereafter issued checks to Taxpayer in an amount equaling the amount of the wire transfers by Borrower. Taxpayer is still in possession of such checks, which have never been cashed. All other repayment checks by Borrower under Promissory Note have been retained by Taxpayer and have not been cashed, or deposited into any other account. Taxpayer is in possession of uncashed checks totaling Amount.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer are consistent with his assertion that his failure to accomplish a timely rollover was caused by erroneous information received from representatives from Financial Institution A and Financial Institution B assuring him that he could invest Amount in Promissory Note through IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount from IRA. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount into an IRA or other eligible retirement plan. Provided all other

requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

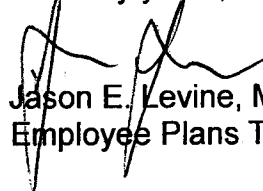
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXX at XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose